



Nevada State Board of Medical Examiners

*** * * MINUTES * * ***

OPEN SESSION BOARD MEETING

**Held in the Conference Room at the offices of the
Nevada State Board of Medical Examiners**

1105 Terminal Way, Suite 301, Reno, NV 89502

and videoconferenced to

the conference room of the Nevada State Board of Dental Examiners

6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, OCTOBER 3, 2008 – 8:30 a.m.

and

SATURDAY, OCTOBER 4, 2008 – 8:30 a.m.

Board Members Present

Charles N. Held, M.D., President

Benjamin J. Rodriguez, M.D., Vice President

Renee West, Secretary-Treasurer

Sohail U. Anjum, M.D.

Javaid Anwar, M.D.

Jean Stoess, M.A.

S. Daniel McBride, M.D.

Van V. Heffner

Board Members Absent

Cindy Lamerson, M.D.

Staff Present

Louis Ling, J.D., Executive Director

Laurie L. Munson, Deputy Executive Director/
Information Systems Administrator/Chief of Administration

Edward O. Cousineau, J.D., Deputy General Counsel

Lyn E. Beggs, J.D., Deputy General Counsel

Douglas C. Cooper, Chief of Investigations

Shawna M. Rice, Compliance Officer/Investigator

Lynnette L. Daniels, Chief of Licensing

Carolyn H. Castleman, Deputy Chief of Licensing

Also Present

Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General
Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation (in Las Vegas)
John Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member (in Las Vegas)
Janet Wheble, P.A.-C, Physician Assistant Advisory Committee Member (in Las Vegas)
Roy M. Cary, Jr., P.A.-C, Physician Assistant Advisory Committee Member (in Las Vegas)
John Steinmetz, R.R.T., Practitioner of Respiratory Care Committee Member (in Las Vegas)
Donald Rider, R.R.T., Practitioner of Respiratory Care Committee Member

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by President Charles N. Held, M.D., at 8:30 a.m.

Ms. Guerci-Nyhus took roll call, and all Board members were present with the exception of Dr. Cindy Lamerson. Ms. Guerci-Nyhus announced that there was a quorum.

Dr. Held announced the reappointment of Jean Stoess to the Board for a second term, and welcomed newly-appointed Board member Van V. Heffner and new Executive Director Louis Ling.

Agenda Item 2

APPROVAL OF MINUTES

- March 28 & 29, 2008 Board Meeting – Open Session, *Amended Minutes*
- June 4, 2008 Telephone Conference Call Board Meeting – Open Session
- June 13 & 14, 2008 Board Meeting – Open/Closed Sessions
- August 5, 2008 Telephone Conference Call Board Meeting – Open Session

Dr. Held stated that the sole change to the March 28 & 29, 2008 Board Meeting Open Session Minutes was the addition of the word "Deputy" at the beginning of Ms. Beggs' title.

Ms. Stoess moved to approve the Amended Minutes of the March 28 & 29, 2008 Board Meeting – Open Session. Dr. McBride seconded the motion, and it passed unanimously.

Dr. Anjum moved to approve the Minutes of the June 4, 2008 Telephone Conference Call Board Meeting – Open Session. Ms. Stoess seconded the motion, and it passed unanimously.

Dr. Rodriguez moved to approve the Minutes of the June 13 & 14, 2008 Board Meeting – Open/Closed Sessions. Ms. Stoess seconded the motion, and it passed unanimously.

Dr. Rodriguez moved to approve the August 5, 2008 Telephone Conference Call Board Meeting – Open Session. Ms. Stoess seconded the motion, and it passed unanimously.

Dr. McBride wanted to put on the record that Dr. Thomas J. Scully, who passed away a month ago, was one of the most outstanding members of the Nevada medical community. He had been the Dean of the Medical School for a time and served on the Board of Medical Examiners for 16 years, part of that time as President of the Board. Dr. McBride wanted to acknowledge his contributions to the medical education and medical community of Nevada, and said that he and Dr. Rodriguez wanted to represent the Board at his memorial service that day.

Agenda Item 5

DISCUSSION OF LEGISLATIVE INITIATIVE CONCERNING DEFINITION OF CLINICAL PRACTICE OF MEDICINE FOR 2009 LEGISLATIVE SESSION

- Louis Ling, J.D., Executive Director

Mr. Ling stated that Board staff had discussed the need for a definition of what "actively engaged in the practice of medicine" means for licensure purposes. There was language before the Board that defines it as not including time in residency or fellowships. If this is something that really needs to be accomplished soon, he would recommend the Board adopting it by regulation.

Discussion ensued concerning whether the definition was necessary, and if so, whether it should include residency and/or fellowship training as part of the five years' clinical practice licensure requirement under NRS 630.1605.

Mr. Cousineau stated that Senator Heck, who drafted the current endorsement statute, indicated his intent was that the five years did not include residency or fellowship, but only clinical practice, so it is quite possible the statute will be clarified during the next legislative session. So the question is whether the Board wants to adopt a regulation defining the term in the interim.

Dr. Anwar moved that the Board proceed with the process of adoption of a proposed regulation defining the five years of clinical practice as it applies to NRS 630.1605 as not including residency training or fellowships. Ms. Stoess seconded the motion, and it passed unanimously.

Agenda Item 6

CONSIDERATION AND APPROVAL OF NEW BOARD MISSION STATEMENT

- Louis Ling, J.D., Executive Director

Mr. Ling stated this was an initiative begun by the previous administration. The language was widely circulated among Board members and others and the idea was to generate a clear statement for the public to sum up what it is the Board does and its intent.

Discussion ensued concerning the wording of the mission statement. Mr. Ling stated he would change the wording "that result in the revocation of rights for unfit practitioners," to "that result in appropriate action," and change the words "we" and "our" to "the Board" throughout the statement. He then read the proposed revision.

Dr. Rodriguez moved that the Board accept the mission statement as revised. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 3

CONSIDERATION AND APPROVAL OF 2007-2008 AUDIT BY SOLARI & STURMER

- Renee West, Secretary-Treasurer

Ms. West stated the auditors were unable to be present at the meeting. There were a couple of items on the report that needed to be highlighted. There was an asset fund that was used to subsidize operating deficits over the last five years, and that fund has essentially been depleted at this point, so there are no more emergency reserves. It is appropriate at this point to go back and revisit the Board's current budget and re-forecast both the revenue and expense

sides of the budget. The revised budget will be presented to the Board at the December meeting. Since the Board's ability to generate additional revenue is limited by law, the best option is to reduce its expenses.

Agenda Item 7

CONSIDERATION OF ADOPTING SCOPE OF PRACTICE GUIDELINES SIMILAR TO THOSE ADOPTED BY THE ARIZONA MEDICAL BOARD

- Louis Ling, J.D., Executive Director

Mr. Ling stated that his understanding of why this item was on the agenda was that the Board's previous Executive Director, Tony Clark, thought this was something the Board should consider due to a trend being seen statewide of physicians who choose to practice outside their area of expertise. The particular set of guidelines presented to the Board touched on three of the areas we are seeing in Nevada, pain management, cosmetic surgery and treatment of erectile dysfunction. These are being implemented as guidelines in Arizona, not by way of regulation or statute.

Discussion ensued concerning whether the guidelines would be effective when there is no way to enforce them.

Ms. Guerri-Nyhus cautioned that the Board would need to ensure that any guidelines it adopts are kept current.

Discussion ensued concerning the purpose of adopting the guidelines and how specific the guidelines should be.

Ms. Beggs stated that this set of guidelines was brought before the Board as an example in order to determine whether the Board had an interest in adopting a set of very general guidelines. If so, staff will develop a set of guidelines and bring them to the Board for review and approval.

Further discussion ensued, and the Board requested that staff bring a draft set of guidelines before it at a future meeting.

Agenda Item 4

CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Edward O. Cousineau, J.D., Deputy General Counsel

- Consideration of Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.275 to Make Confidentiality of Certain Information Applicable to Practitioners of Respiratory Care, as Well as Physicians and Physician Assistants

Mr. Cousineau explained that the first proposed regulation before the Board would modify NAC 630.275 to incorporate language that would include practitioners of respiratory care among those who are subject to the confidentiality mandates of NRS 630.336. This would ensure all the Board's licensees are protected under that statute.

Dr. McBride moved that the Board authorize staff to proceed with the process of adoption of the proposed regulation. Mr. Heffner seconded the motion, and it passed unanimously.

- **Consideration of Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.290 to Remove the Requirement that an Applicant for a Physician Assistant License State His or Her Gender on the Application for Licensure**
- **Consideration of Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.505 to Remove the Requirement that an Applicant for a Practitioner of Respiratory Care License State License State His or Her Gender on the Application for Licensure**

Mr. Cousineau stated the second and third proposed regulations are synonymous. NAC 630.290 relates to physician assistants and NAC 630.505 relates to practitioners of respiratory care. The Board's previous Executive Director, Tony Clark, proposed that the Board consider redacting the language that requires physician assistants and practitioners of respiratory care to state their gender on their applications because physicians are not required to do so. After further discussion by staff concerning the matter, it was felt it would be appropriate to retain the language in the regulations and possibly add it to the statute that pertains to physician applicants.

Discussion ensued concerning the ramifications of requiring that gender be stated on application forms.

Mr. Cousineau stated that both the Board of Osteopathic Medicine and the Board of Pharmacy require gender be stated on their applications.

Dr. Anwar moved that the Board not authorize staff to proceed with the process of adoption of the proposed regulation as written. Ms. Stoess seconded the motion, and it passed unanimously.

Agenda Item 8

DISCUSSION CONCERNING APPROPRIATE LANGUAGE IN APPLICATIONS FOR INITIAL LICENSURE OR RENEWAL OF LICENSURE, AND RELATING TO THE APPLICANT'S DUTY TO DISCLOSE CERTAIN INVESTIGATORY MATTERS

- Louis Ling, J.D., Executive Director; S. Daniel McBride, M.D., Board Member; Douglas C. Cooper, Chief of Investigations; Lynnette L. Daniels, Chief of Licensing

Mr. Ling stated that this item was before the Board to attempt to resolve the issue of how the Board can obtain confidential information concerning complaints filed against applicants in other states that do not result in disciplinary action, without breaching an applicant's right to confidentiality of that information.

Discussion ensued concerning the best way for the Board to obtain this information from its applicants in order to maintain confidentiality and the language that should be included on the application to request the information.

Mr. Ling said that staff had brought this matter before the Board for its direction and would present recommendations for the new language to the Board for review at its next meeting.

Dr. McBride moved that staff make changes to the proposed language and bring its recommendations back to the Board for consideration at the next meeting. Dr. Anwar seconded the motion, and it passed unanimously.

[Drs. Rodriguez and McBride left the meeting at 9:30 a.m.]

Agenda Item 13

REPORTS

- Diversion Program: Quarterly Report

Peter A. Mansky, M.D., Director of the Nevada Health Professionals Assistance Foundation, explained he had received questions from Board Members and others concerning oversight of the Foundation, and he had addressed those questions in his quarterly report, which has been provided to the Board members. There are advisory committees in the north and south that participants can appeal to in the event they are unhappy with the Diversion Program. He has also responded in his report to an inquiry from Douglas Cooper concerning toxicology studies. In each case, the results need to be reviewed, which is generally done by a medical review officer. He and one of the Foundation's Board members are qualified as such. Additionally, they are available to the Board and Investigative Committees if they have questions concerning psychiatry, addiction or behavioral problems. Additionally, he wanted to reemphasize the Program's ability to act quickly on the basis of health and wellness in getting someone in the Program when necessary. There are currently 104 participants in the program. They have developed an ability to look at risk factors, which compares the percentage of physicians in the program to the number of physicians in the state, and have found that the highest risk specialties are anesthesiology, emergency medicine and family practice.

- Physician Assistant Advisory Committee

John B. Lanzillotta, P.A.-C, said he wanted to address two of the recommendations made by Roy Cary, P.A.-C., at the Board's last meeting that may involve changes to the Nevada Administrative Code. The first one concerns expanding the role of the Physician Assistant Advisory Committee with more active participation involving licensing and disciplinary actions. There are a number of states with models that could be used to discuss these items. The second concerns the recertification exam with the National Commission. Currently five of the largest states that employ physician assistants allow CME in lieu of recertification. The Board of Osteopathic Medicine currently allows CME. He is asking to meet prior to the December meeting with some of the Board members and/or staff to go over some of their recommendations and address this again at the December meeting.

Mr. Ling stated he would contact Mr. Lanzillotta to set a time when he could meet with the Advisory Committee.

- Practitioner of Respiratory Care Advisory Committee

John Steinmetz, R.R.T. stated the Nevada Society for Respiratory Care held its annual meeting in September and there was much discussion and concern regarding the issue of sleep medicine, in that it is their perception that regulation of these clinics may be somewhat loose and there was a question regarding training and supervision of technicians and whether there may be a possible infringement on their scope of practice. They want to get some direction from the Board as to whether this is an issue that may need to be investigated in the future. Additionally, an issue was brought to the Board previously concerning respiratory practitioners performing needle aspirations of the chest for pneumothorax for neonatal patients, which is a common practice, and that this should not be limited in their scope of practice.

Dr. Anwar said the Board could take a look at the scope of practice issue if the Committee would like to provide it with some information.

Dr. Held asked whether the sleep technician issue is something the Advisory Committee would like to have studied. Mr. Steinmetz said he believed the issue needs to be researched further as it is a nationwide issue, and that the Advisory Committee would also like to receive some guidance from the Board's new Executive Director.

Mr. Ling stated he would like to meet with the Advisory Committee and that he would contact them to set a time when they could meet.

**Investigative Committees – Charles N. Held, M.D., Board Member, Chairperson,
Investigative Committee A
Sohail U. Anjum, M.D., Vice President, Chairperson,
Investigative Committee B**

- Consideration of Cases Recommended for Closure by the Committees

Dr. Held reported that Investigative Committee A had considered 122 cases, authorized the filing of a formal complaint in 4 cases, requested an appearance in 7 cases, issued 16 letters of concern, sent 2 cases out for a peer review, referred 5 cases back to investigative staff for further investigation or follow-up, reviewed 4 cases for compliance and recommended closure of 84 cases.

Dr. Held moved to approve for closure the cases recommended by Investigative Committee A. Ms. Stoess seconded the motion, and it passed unanimously.

Dr. Anjum reported that Investigative Committee B had considered 86 cases, requested an appearance in 5 cases, issued 8 letters of concern, sent 1 case out for a peer review, referred 1 case back to investigative staff for further investigation or follow up and recommended closure of 71 cases.

Dr. Heffner moved to approve for closure the cases recommended by the Investigative Committees. Dr. Anjum seconded the motion, and it passed unanimously.

- Investigations Division

- Certified Medical Board Investigator Training

Mr. Cooper stated that four of the Board's investigators are now Certified Medical Board Investigators through the academy sponsored by the Administrators in Medicine.

- Status of Investigative Caseload

Mr. Cooper stated that during the last quarter there were 208 cases considered by the Investigative Committees. There were 178 closures, 4 cases were sent to Legal for initiation of formal complaints, 12 cases resulted in a request for an appearance by the licensee before the Committees and there were 24 cases that resulted in letters of concern. The current investigative caseload is 56 cases per investigator. There are still 161 court cases from late 2006 and from 2007 that have to be opened and investigated, and the majority of those cases will be opened in the next couple of months.

- Compliance Report

Mr. Cooper reported that the outstanding balance owed to the Board was previously \$77,000, to which \$11,000 was added from the latest adjudications. The Board has collected \$13,212, leaving an outstanding balance due to the Board of \$75,353. The balance owed to the Board has been steadily dropping. The Attorney General's Office is also assisting the Board with collection in some cases. Mr. Cooper explained that amounts that may be included in the "uncollectable" category would be those that the Board had been advised by counsel they would not be able to collect for one reason or another. Compliance Officer/Investigator Shawna Rice added that the debts of those who file bankruptcy or pass away are also added to that category as they occur. Ms. Guerri-Nyhus stated there will be additional cases added to that category in December, as some of the cases the Attorney General's Office has been handling are going to be deemed uncollectable due to the debtor being in jail or otherwise. Mr. Ling stated he was working on ways to make sure that the Board collects as much of the outstanding balance as possible and that no new cases will become uncollectable, and he will present those to the Board.

- Nevada State Medical Association Liaison Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, advised the Board that two weeks ago the Center for Ethics and Health Policy and the Nevada State Medical Association co-sponsored the First Health Professionals Ethics Summit in Las Vegas to look at ethical issues and ways to develop continuing education programs that will be available to the Boards when looking at ethical behavioral problems. The Nevada State Medical Association is also on a national steering committee of a group headed by the CDC Foundation and Honor Reform, a national advocacy group for patients who have become infected with Hepatitis in health care settings. The group is working on an injection safety campaign and Nevada will be the site of testing the education materials that will be offered for medical practices of all types, and then they will roll out a national campaign.

- Clark County Medical Society Liaison Report

Neither Dr. Rodriguez nor anyone from the Clark County Medical Society was present to provide a report.

- Washoe County Medical Society Liaison Report

Neither Dr. Lamerson nor Jeanie L. Catterson from the Washoe County Medical Society was present to provide a report.

Agenda Item 10

CONSIDERATION OF REQUEST OF PREM KITTUSAMY, M.D., FOR APPROVAL OF A HANDS-ON PERIPHERAL VASCULAR INTERVENTION PROGRAM AT VALLEY HOSPITAL AND MEDICAL CENTER IN LAS VEGAS

- Lynnette L. Daniels, Chief of Licensing

Ms. Daniels stated that Dr. Kittusamy initially contacted the Board in April and staff had some questions. He submitted additional information to the Board, which was submitted to the Executive Committee for approval of the course, and the Executive Committee had additional questions. She has provided all materials to the Board for review.

Dr. Kittusamy stated the physicians would be screened by Custom Medical, the company that is sponsoring the course. He described the qualifications each physician will have to meet in order to qualify for the program. The participating physicians will be licensed physicians who are already trained in cardiovascular interventions, radiology interventions and vascular surgery, and will mostly come from rural or small areas where they don't have ready access to training. He stated he would like to provide the course to physicians on a quarterly basis.

Dr. Anjum inquired as to whether the training would be hands-on, and Dr. Kittusamy stated it would be and that they would obtain proper consents from the patients.

Dr. Held inquired as to malpractice issues, and Dr. Kittusamy stated he would be the primary operator and would be responsible for all issues that might arise in the course of the training.

Ms. Daniels asked whether Dr. Kittusamy will be paid to provide the course, and Dr. Kittusamy stated he would be paid by educational grants, but there would be no charge to the participating physicians.

Discussion ensued concerning the qualifications of the physicians who would be participating in the program in order to ensure the safety of the patients.

Dr. Anwar moved that the Board approve the course. Dr. Anjum seconded the motion. Dr. Anwar amended his motion to include that approval would be for one year and the Board would re-review at the end of one year. Dr. Anjum seconded the amended motion, and it passed, with Mr. Heffner abstaining from the vote and the Chair voting against the motion.

Agenda Item 11

CONSIDERATION OF REQUEST OF WILLIAM WERSCHLER, M.D., FOR APPROVAL FOR OUT-OF-STATE PHYSICIANS TO PERFORM LIVE, NON-SURGICAL AESTHETIC TREATMENT DEMONSTRATIONS AT THE AMERICAN SOCIETY OF COSMETIC DERMATOLOGY AND AESTHETIC SURGERY (ASCDAS), DECEMBER 4-7, 2008, AT THE WYNN LAS VEGAS RESORT IN LAS VEGAS

- Lynnette L. Daniels, Chief of Licensing

Ms. Daniels stated the only concern she had with this request was that two of the proposed participating physicians are from Canada and according to NRS 630.047, participating physicians have to be licensed in another state, and they are not.

Discussion ensued concerning the interpretation of the word "state" in the statute, and whether that limits it to a state within the United States.

Dr. Anwar moved that the Board approve the request, with the exclusion of the two Canadian physicians who are not licensed in the United States. Ms. Stoess seconded the motion, and it passed unanimously.

Agenda Item 14

EXECUTIVE STAFF REPORTS

- Louis Ling, J.D., Executive Director

- Ratification of Approval of Revised Board Officer Description for the Secretary-Treasurer

Mr. Ling stated that the first couple of items are cleanup items in terms of the Board's policies and procedures manual. The first is ratification of the change made by the Board that the Board member serving as the Secretary-Treasurer would no longer automatically serve as the Chairperson of Investigative Committee A.

Dr. Held moved to ratify the change. Ms. Stoess seconded the motion, and it passed unanimously.

- Consideration and Approval of Change to Job Title and Job Description of Executive Director/Special Counsel

Mr. Ling stated he originally wanted to change the Executive Director/Special Counsel title to Executive Director/General Counsel, but after further discussion with staff, he is requesting the Board drop all references to counsel and change his title to Executive Director. He will continue to oversee and supervise the legal staff and his duties will not change, but his title will no longer contain any reference to counsel.

Ms. Stoess moved to ratify the change. Mr. Heffner seconded the motion, and it passed unanimously.

- Consideration and Approval of Addition to Job Title and Job Description of Credentialing Specialist

Mr. Ling explained the reason for this change is to add additional responsibilities to the position and to define and formalize existing duties of the position, and the change in title will acknowledge these duties and responsibilities.

Mr. Heffner moved to ratify the change. Ms. Stoess seconded the motion, and it passed unanimously.

- Consideration of Request for Staff Attendance at Educational Meetings

Mr. Ling requested authority for himself and Ms. Daniels to attend the AIM Western and Central Regional Meeting in Kansas City, Missouri. He would like to begin attending meetings of the various organizations to determine which ones will be worth going to in the future.

Mr. Heffner moved to approve the request for training. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 15

LEGAL REPORTS - Edward O. Cousineau, J.D., Deputy General Counsel
Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

- Board Litigation Status

- Board Litigation Status

Mr. Cousineau reported there were 2 cases pending adjudication, one settlement, one request for order to show cause and one request for withdrawal of license application that had yet to be discussed at the meeting. There were 31 letters of concern sent out following the June Board Meeting, and 27 new letters to be sent out. There are currently 31 cases scheduled for hearing through August of next year, 14 cases pending filing formal complaints and 25 cases pending completion of Investigative Committee summaries. With respect to court appellate cases, the Wick matter is still pending a briefing schedule in the Nevada Supreme Court and the Lakner case is still pending oral argument in District Court on judicial review.

Ms. Guerci-Nyhus reported the Attorney General's Office is currently handling two cases that are in litigation in the Eighth Judicial District Court – the temporary restraining orders and complaints for preliminary injunction and injunctive relief against Drs. Depak Desai and Eladio Carrera. Dr. Desai had stipulated to leave the restraining order in place pending the outcome of his disciplinary hearing and Dr. Carrera entered into a similar agreement in September.

Agenda Item 12

DISCUSSION CONCERNING BOARD RESPONSES TO MEDIA INQUIRIES REGARDING PENDING CASES AND BOARD PROCEDURES

- Louis Ling, J.D., Executive Director; Renee West, Secretary-Treasurer

Mr. Ling explained this item was on the agenda because he wanted to find out what it is that the Board expects from themselves and from their staff in terms of relations with the media. He suggested that the Board policy be that all press contacts made directly to Board members be directed to him and that Board members do not talk with the press until talking to him, and then he can talk with the reporter to determine whether it would be beneficial for the Board member to talk with the reporter, and then he would re-contact the Board member and invite him or her to be involved. That way he would be aware of these media contacts and could ensure that the Board's responses are consistent and ensure the message going out is the message the Board wants. He would suggest that contacts from Legislators or the Governor's office be handled in the same manner. The same policy would be in place with respect to staff.

Discussion ensued concerning the policy.

Dr. Anjum moved that the Board approve the policy as presented by Mr. Ling. Ms. West seconded the motion.

[Drs. Rodriguez and McBride returned to the meeting at 11:15 a.m.]

Mr. Ling stated the policy would be memorialized in writing.

Further discussion ensued concerning the policy.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 16

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. ELLIOTT SCHMERLER, M.D., BME CASE NO. 08-9279-1

- Christine M. Guerici-Nyhus, J.D., Chief Deputy Attorney General

OPEN SESSION

Dr. Schmerler was present in Las Vegas. Walter Fey, Esq., was present in Reno, as counsel for Dr. Schmerler.

Ms. Guerici-Nyhus named the members of the Investigative Committee who reviewed the case and stated that since Dr. Held was a member of that Committee, Dr. Rodriguez would chair the adjudication.

Mr. Fey stated Dr. Schmerler wanted to renew his Motion for Continuance filed on September 18, 2008, and that counsel for the Board has opposed the motion.

Ms. Beggs stated she had provided the Motion for Continuance to the adjudicating Board members but had not provided them with her opposition, so she summarized the opposition.

Dr. Anjum moved that the Board deny the Motion for Continuance. Mr. Heffner seconded the motion, and it passed, with all adjudicating members voting in favor of the motion.

Ms. Guerici-Nyhus asked the adjudicating Board Members whether they had reviewed the information provided relative to the adjudication, and all indicated they had. She then summarized the facts of the case.

Discussion ensued concerning whether Dr. Schmerler obtained his license, and thereafter renewed his license, based upon misrepresentation.

Dr. McBride moved that the Board find Dr. Schmerler guilty of both counts of the Complaint. Mr. Heffner seconded the motion, and it passed unanimously.

Ms. Guerici-Nyhus read the options available to the Board for discipline.

Discussion ensued concerning the type of discipline that should be imposed.

Dr. McBride moved that the Board revoke Dr. Schmerler's license to practice medicine and that he reimburse the Board's costs and expenses incurred in the prosecution of the case against him. Mr. Heffner seconded the motion.

Mr. Cooper stated the costs incurred by the Board in the investigation were \$7,647.11.

Dr. McBride amended his motion to require that Dr. Schmerler reimburse the Board's costs and expenses within 90 days of the order. Mr. Heffner seconded the amended motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 17

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. MARK RUSSELL, C.R.T., BME CASE NO. 07-26329-1

- Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

OPEN SESSION

Ms. Guerci-Nyhus named the Investigative Committee Members who reviewed the case and stated that since Dr. Held was a member of that Committee, Dr. Rodriguez would chair the adjudication. She then summarized the facts of the case. She asked the adjudicating members whether they had reviewed the information provided relative to the adjudication, and all indicated they had.

Discussion ensued concerning whether Mr. Russell had willfully made a false statement in his application for licensure.

Dr. Anjum moved that the Board find Mr. Russell guilty of the charges in the Complaint. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Ms. Guerci-Nyhus read the options available to the Board for discipline.

Dr. McBride moved that the Board revoke Mr. Russell's license to practice respiratory therapy and that he reimburse the Board's costs and expenses incurred in the prosecution of the case against him within 90 days of the order. Mr. Heffner seconded the motion.

Mr. Cooper stated the costs incurred by the Board in the investigation were \$3,080.56.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF ORDER TO SHOW CAUSE IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. KENT ALAN SWAINE, M.D., BME CASE NO. 07-20873-1

- Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

OPEN SESSION

Ms. Guerci-Nyhus named the members of the Investigative Committee who reviewed the case. Since Dr. Held was a member of that Committee, Dr. Rodriguez chaired the adjudication. Dr. McBride recused himself from the matter as he is the Chief of Staff for Spring Valley Hospital. Ms. Guerci-Nyhus asked the adjudicating Board Members whether they had reviewed the information provided relative to the adjudication, and all indicated they had. She then summarized the facts of the case.

Discussion ensued concerning whether Dr. Swaine violated certain terms of his previous settlement agreement with the Board.

Dr. Anwar moved that the Board find Dr. Swaine guilty of the charges against him in the complaint. Mr. Heffner seconded the motion.

Ms. Guerci-Nyhus stated the matter before the Board was consideration of an order to show cause why Dr. Swaine's license shouldn't be revoked. The Board has suspended revocation of his license as part of the settlement agreement with Dr. Swaine, so the appropriate motion would be either to remove the suspension and revoke Dr. Swaine's license or to leave the suspension in place.

Discussion ensued concerning whether the suspension should be removed, thereby revoking Dr. Swaine's license.

Dr. Anwar moved that the Board remove the suspension. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Discussion ensued concerning whether reimbursement of costs could be assessed against Dr. Swaine. Ms. Guerci-Nyhus stated that since costs were not requested as part of the request for order to show cause, they could not be assessed.

Agenda Item 19

**CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DANA MARKS, M.D.,
BME CASE NO. 08-18131-1**

- Lyn E. Beggs, J.D., Deputy General Counsel

OPEN SESSION

Ms. Beggs described the facts of the case and the terms of the settlement agreement. As part of the settlement agreement, Dr. Marks would not contest the two counts in the complaint against him. His license would be revoked, with the revocation stayed, and Dr. Marks would be placed on probation for 60 months with the following conditions: That he be issued a public reprimand, that he pay a fine of \$1,000 to be paid within 180 days, that he complete an ethics CME course within 12 months, that he submit to a drug and alcohol evaluation and if recommended by the evaluator, he enter into a contract with the Nevada Professionals Health Program for a period of five years and remain in compliance with that during the probationary period, and that he be assessed costs in the amount of \$2,726.64, to be paid within 90 days.

Dr. Anjum moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion.

Ms. Guerci-Nyhus named the members of the Investigative Committee who reviewed the case.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 20

**CONSIDERATION OF STIPULATION FOR WITHDRAWAL OF APPLICATION FOR
LICENSURE OF JAMES MURPHY, M.D.**

- Edward O. Cousineau, J.D., Deputy General Counsel

OPEN SESSION

Walter Fey, Esq., was present in Reno, as counsel for Dr. Murphy.

Mr. Cousineau described the facts of the case and explained that if the Board were to accept the settlement, Dr. Murphy would withdraw his application, the Board would vacate its order of June 2007 denying Dr. Murphy licensure, and the parties would submit to the District Court a stipulation to dismiss the appeal.

Mr. Fey requested the Board accept the stipulation.

Discussion ensued concerning whether the Board should accept the settlement, the status of the matter following withdrawal of Dr. Murphy's application if the Board accepted the settlement, the Board's response to public inquiries concerning Dr. Murphy's application if the Board accepted the settlement and how the settlement could be reported to the National Practitioner Data Bank.

Dr. Rodriguez moved that the Board accept the stipulation for withdrawal. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 21

LICENSURE RATIFICATION

Dr. Rodriguez moved that the Board ratify the licenses issued and reinstatements of licensure and changes of licensure status approved since the June 13 & 14, 2008 Board meeting. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 9

**DISCUSSION CONCERNING BOARD MEMBER DUTIES AND CONFLICT OF INTEREST
FORM**

- Christine M. Guerri-Nyhus, Chief Deputy Attorney General; Lyn E. Beggs, Deputy General Counsel

Ms. Guerri-Nyhus outlined the duties and responsibilities of Board Members utilizing a Powerpoint presentation, and discussed ensued.

Discussion ensued concerning completion of the Conflict of Interest form, and all Board members agreed they would sign it.

RECESS

Dr. Held recessed the meeting for lunch at 1:05 p.m.

RECONVENE

Dr. Held reconvened the meeting at 2:35 p.m.

Agenda Item 22

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS
FOR LICENSURE**

22(a) Zhen Xiang Liu, M.D.

Zhen Xiang Liu, M.D. on his application for a limited license for residency training.

Dr. Held asked Dr. Liu whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Anwar questioned Dr. Liu concerning the fact that he responded in the negative to Question 19 on his application for licensure when he should have responded in the positive.

Dr. Liu explained that he did not realize that when he was asked by his Program Director, during his residency at St. Vincent's Medical Center, to take courses in English to improve his communication skills that he was on probation, and that is why he responded to the question in the negative.

Dr. Anwar moved that the Board grant Dr. Liu's application for a limited license for residency training. Ms. Stoess seconded the motion, and it passed unanimously.

22(b) Araz Tawfique, M.D.

Araz Tawfique, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Tawfique whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Anwar questioned Dr. Tawfique concerning the fact that he responded in the negative to Question 13 on his application for licensure when he should have responded in the positive.

Dr. Tawfique explained that his arrest for battery occurred in 1991 and he did not remember the incident at the time he completed his application for licensure, which he completed in a hurry.

Dr. Anwar moved that the Board grant Dr. Tawfique's application for licensure. Mr. Heffner seconded the motion. A vote was taken on the motion and it failed, due to a tie vote, with Dr. Anwar, Mr. Heffner, Dr. Anjum and Ms. Stoess voting in favor of the motion and Dr. McBride, Ms. West, Dr. Rodriguez and the Chair voting against the motion.

Dr. Held explained to Dr. Tawfique that the Board had the option to discuss the matter further and a Board member could make another motion, but there was a potential that Dr. Tawfique's application would be denied. He told Dr. Tawfique that he had the option to withdraw his application at that time, and Dr. Tawfique withdrew his application.

22(c) Share-Dawn Paulette Angel, M.D.

Share-Dawn Paulette Angel, M.D. appeared before the Board on her application for a limited license for residency training.

Dr. Held asked Dr. Angel whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Rodriguez questioned Dr. Angel concerning her affirmative response to Question 19 on her application for licensure.

Dr. Angel explained the difficulties she had during her prior residency training and due to a particular medical condition she had.

Dr. Rodriguez moved that the Board grant Dr. Angel's application for a limited license for residency training. Ms. Stoess seconded the motion, and it passed unanimously.

22(d) Khalil Jamal Carter, M.D.

Khalil Jamal Carter, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Carter whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Ms. West questioned Dr. Carter concerning the fact that he responded in the negative to Question 13 on his application for licensure when he should have responded in the positive.

Dr. Carter explained that he had been advised by his attorney that because his criminal case had been expunged he would not have to disclose it, but he realizes now that he should have done so, since the application form states that cases must be disclosed even if they have been expunged.

Ms. West moved that the Board grant Dr. Carter's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously.

22(e) Simon Wilson, M.D.

Simon Wilson, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Wilson whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Mr. Heffner questioned Dr. Wilson concerning his affirmative response to Question 12 on his application for licensure.

Dr. Wilson described the circumstances surrounding the one malpractice case against him that resulted in a settlement.

Dr. Anwar moved that the Board grant Dr. Wilson's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously.

Agenda Item 23

MATTERS FOR FUTURE AGENDA

Mr. Ling stated the following matters would be on the Agenda for the December 2008 meeting: consideration of the proposed 2009 meeting schedule; consideration any regulatory

amendments that were approved to go forward at this meeting and that have gone through the public hearing process; a revised budget for the remainder of the current fiscal year and a proposed budget for the next biennium; consideration and approval of a new policies and procedures manual and consideration of additions to the Board's legislative proposals.

Discussion ensued concerning how the legislative proposals were going to be handled and how to keep the Board members more informed during the process.

Dr. Held asked whether there was a way that staff could send a letter to any applicant they find has answered a question on his or her application incorrectly, advising the applicant that he or she has answered incorrectly and will have to reapply, as a way to streamline the number of appearances that come before the Board. Ms. Daniels stated that staff was working on that issue.

Dr. Held stated there was a vacancy on Investigative Committee A and he wanted Dr. Rodriguez to fill that vacancy. Dr. Rodriguez agreed.

22(h) Daniel M. Stasik, P.A.

Daniel M. Stasik, P.A. appeared before the Board on his application for licensure.

Dr. Held asked Mr. Stasik whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Anjum moved to go into Closed Session. Dr. Held seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar moved to grant Mr. Stasik's application for licensure contingent upon successful completion of his contract with the Diversion Program.

Discussion ensued concerning whether the Board can make completion of his contract with the Diversion Program a condition of licensure since he entered into the contract voluntarily prior to applying for licensure.

Dr. Rodriguez seconded the motion, and it passed unanimously.

22(f) Luke Ellison, C.R.T.

Luke Ellison, C.R.T. appeared before the Board on his application for licensure.

Dr. Held asked Mr. Ellison whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Ms. West questioned Mr. Ellison concerning his affirmative response to Question 12 on his application for licensure.

Mr. Ellison described the circumstances surrounding his arrests and his participation in drug court.

Ms. West moved that the Board grant Mr. Ellison's application for licensure. Mr. Heffner seconded the motion, and it passed unanimously.

22(i) Sam H. Alexander, M.D.

Sam H. Alexander, M.D. appeared before the Board on his application for licensure by endorsement.

Dr. Held asked Dr. Alexander whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Held moved to go into Closed Session. Dr. McBride seconded the motion, and it passed.

Upon returning to Open Session, Dr. McBride moved to grant Dr. Alexander's application for licensure. Dr. Anwar seconded the motion.

Ms. Daniels stated that the Board needed to receive direct-source verification of Dr. Alexander's American Board of Medical Specialties Ob/Gyn certification before issuing the license.

A vote was taken on the motion and it passed unanimously.

22(j) Jonathan L. McCaleb, M.D.

Jonathan L. McCaleb, M.D. appeared before the Board on his application for a limited license for residency training.

Dr. Held asked Dr. McCaleb whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Held disclosed that Dr. McCaleb had been his neighbor for five years and had babysat his children 10 years ago.

Dr. Anwar questioned Dr. McCaleb concerning his affirmative response to Questions 13 and 19 on his application for licensure.

Dr. McCaleb explained the circumstances surrounding his arrests in 2004 and 2008 and described his difficulties during his residency training at Cedars-Sinai Medical Center.

Dr. Anwar moved that the Board grant Dr. McCaleb's application for a limited license for residency training contingent upon successful completion of his contract with the Diversion Program. Ms. Stoess seconded the motion, and it passed unanimously.

RECESS

Dr. Anjum moved to recess the meeting. Dr. Held seconded the motion. Dr. Held recessed the meeting at 5:10 p.m.

SATURDAY, OCTOBER 4, 2008

Board Members Present

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Renee West, Secretary-Treasurer
Sohail U. Anjum, M.D.
Javaid Anwar, M.D.
Jean Stoess, M.A.
S. Daniel McBride, M.D.

Board Members Absent

Cindy Lamerson, M.D.
Van V. Heffner

Staff Present

Louis Ling, J.D., Executive Director/Special Counsel
Laurie L. Munson, Deputy Executive Director/
Information Systems Administrator/Chief of Administration
Lyn E. Beggs, J.D., Deputy General Counsel
Carolyn H. Castleman, Deputy Chief of Licensing

RECONVENE

Dr. Held reconvened the meeting at 8:30 a.m.

Ms. Beggs took roll call and all Board members were present with the exception of Dr. Lamerson and Mr. Heffner. Ms. Beggs announced that there was a quorum.

Agenda Item 22 (CONTINUED)

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS
FOR LICENSURE**

22(I) Chentsu B. Pan, M.D.

Chentsu B. Pan, M.D. appeared before the Board on his application for licensure by endorsement.

Dr. Held asked Dr. Pan whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Ms. Stoess questioned Dr. Pan concerning his practice history, and Dr. Pan described same.

Ms. Stoess moved that the Board exercise its discretion to grant licensure by endorsement to Dr. Pan. Dr. Rodriguez seconded the motion, and it passed unanimously.

22(m) Sunita B. Kalra, M.D.

Sunita B. Kalra, M.D. appeared before the Board on her application for licensure.

Dr. Held asked Dr. Kalra whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Held questioned Dr. Kalra concerning her education and training.

Dr. Kalra described her education at the International Center of Health Sciences and Windsor University and stated she has become board certified since initially applying for licensure.

Dr. Held moved that the Board grant Dr. Kalra's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously.

22(n) George A. Fredrick, M.D.

George A. Fredrick, M.D. appeared before the Board on his application for status change.

Dr. Held asked Dr. Fredrick whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Held moved to go into Closed Session. Dr. McBride seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anjum moved to grant Dr. Fredrick's application for status change to active with the condition that he only practice within Southern Nevada Health District or with other agencies in conjunction with his duties with the Southern Nevada Health District and that any modification to these conditions has to come back to the Board for approval. Dr. McBride seconded the motion, and it passed unanimously.

22(k) Carey I. Weiss, M.D.

Carey I. Weiss, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Weiss whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez questioned Dr. Weiss concerning his practice plans if granted a license.

Dr. Weiss stated that he works with a company that provides anesthesia services and that company is providing services at Centennial Hills in Las Vegas and may be providing services to a couple of other facilities in Nevada in the future.

Dr. Rodriguez moved that the Board grant Dr. Weiss' application for licensure. Dr. McBride seconded the motion, and it passed unanimously.

22(o) Sharmane M. Gray

Sharmane M. Gray, M.D. appeared before the Board on her application for licensure.

Dr. Held asked Dr. Gray whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Held questioned Dr. Gray concerning her affirmative response to Question 19 on her application for licensure.

Dr. Gray explained the circumstances surrounding the difficulties she encountered during her residency training at Naval Hospital in Jacksonville and described the remainder of her training.

Dr. Held moved that the Board grant Dr. Gray's application for licensure. Dr. McBride seconded the motion, and it passed unanimously.

22(p) Jonathan R. Oppenheimer, M.D.

Jonathan R. Oppenheimer, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Oppenheimer whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Held moved to go into Closed Session. Dr. Anjum seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar moved that the Board grant Dr. Oppenheimer's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously.

22(q) Sushil Patel, M.D.

Sushil Patel, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Patel whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. McBride questioned Dr. Patel concerning his medical training, and Dr. Patel described same.

Dr. McBride moved that the Board grant Dr. Patel's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously.

22(r) Sahar A. Samaha, M.D.

Sahar A. Samaha, M.D. appeared before the Board on her application for licensure.

Dr. Held asked Dr. Samaha whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Ms. Stoess questioned Dr. Samaha concerning her affirmative response to Question 12 on her application for licensure.

Dr. Samaha explained the circumstances surrounding the single claim of malpractice against her.

Ms. Stoess moved that the Board grant Dr. Samaha's application for licensure. Dr. McBride seconded the motion, and it passed, with Dr. Anjum voting against the motion and the Chair voting in favor of the motion.

22(s) David Eli Fish, M.D.

David Eli Fish, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Fish whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Held asked Dr. Fish what he planned to do if granted a license in Nevada.

Dr. Fish explained he would be performing independent medical evaluations and testifying as an expert witness.

Dr. Held moved that the Board grant Dr. Fish's application for licensure. Ms. Stoess seconded the motion, and it passed unanimously.

22(u) David N. Jackson, M.D.

David N. Jackson, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Jackson whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Held questioned Dr. Jackson concerning his affirmative response to Question 31 on his application for licensure.

Dr. Jackson explained that he responded in the affirmative because he had been audited by Medicaid.

Dr. Held moved that the Board grant Dr. Jackson's application for licensure. Dr. Rodriguez seconded the motion, and it passed unanimously.

22(v) John J. Kastrup, M.D.

John J. Kastrup, M.D. appeared before the Board on his application for licensure.

Dr. Held asked Dr. Kastrup whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. McBride questioned Dr. Kastrup concerning his affirmative response to Question 12 on his application for licensure.

Dr. Kastrup described the circumstances surrounding the claims of malpractice against him.

Dr. McBride moved that the Board grant Dr. Kastrup's application for licensure. Dr. Anwar seconded the motion, and it passed unanimously.

Agenda Item 24

PUBLIC COMMENT

Dr. Held asked whether there were any members of the public present who would like to make a public comment, and there were none.

Discussion ensued as to how to streamline applicant appearances before the Board.

ADJOURNMENT

Dr. Held moved to adjourn the meeting. Dr. Anjum seconded the motion, and it passed. Dr. Held adjourned the meeting at 11:05 a.m.